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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,836	02/03/2000	Victor S. Moore	BC9-99-044	7966
23334	7590	08/09/2007	EXAMINER	
FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. ONE BOCA COMMERCE CENTER 551 NORTHWEST 77TH STREET, SUITE 111 BOCA RATON, FL 33487			NEURAUTER, GEORGE C	
ART UNIT		PAPER NUMBER		
2143				
MAIL DATE		DELIVERY MODE		
08/09/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/497,836	MOORE ET AL.	
	Examiner	Art Unit	
	George C. Neurauter, Jr.	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 May 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6-9,11-14,19 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6-9,11-14,19 and 21-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 1-4, 6-9, 11-14, 19, and 21-23 are currently presented and have been examined.

Response to Arguments

Applicant's arguments with respect to claims 1-4, 6-9, 11-14, 19, and 21-23 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-2, 4, 6-7, 9, 11-12, 14, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,014,707 A to Miller et al in view of "GetRight Help Contents" ("GetRight").

Regarding claim 1, Miller discloses a communication method for limiting transmission rate of data being transmitted from a server to a requesting computer (referred to within Miller as "client"), said method comprising steps of:

receiving, at a server from a requesting computer, a request for a specified data item, the specified data item to be delivered in its entirety prior to being accessed by the

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requesting computer ("DownloadStart" message; see column 7, lines 4-34 of Miller);

receiving, at the server from the requesting computer, in conjunction with receiving the request for the specified data item, a speed indication signal that comprises an indicated speed of transmission specifying a maximum transmission rate to be used in transmitting the specified data item from the server to the requesting computer ("delay" field within the "DownloadStart" message; column 7, lines 28-29); and

transmitting the specified data item from the server to the requesting computer, the transmitting comprising limiting, by the server, an average rate of transmission while sending at least a portion of the specified data item across a data link from the server to the requesting computer to be not greater than the maximum transmission rate represented within the speed indication signal received from the requesting computer, wherein the maximum transmission rate is based upon the user input speed setting and is less than the data rate of the data link and less than the data rate capacity of the requesting computer. (column 2, lines 32-41; column 2, line 63-column 3, line 1; column 5, lines 34-50; column 8, lines 6-21; column 11, lines 61-65)

Miller does not expressly disclose accepting a user request for the specified data item at the requesting computer,

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accepting, at the requesting computer in response to accepting the user request for the specified data item, a user input speed setting, wherein the user input speed setting is not related to a speed that is associated with the specified data item, and generating, at the requesting computer in response to accepting the user input setting, a speed indication signal, however, "GetRight" does disclose these limitations. (see at least pages 3 and 4, specifically the section "**Starting Downloads with GetRight**"; page 8, specifically "**Obey Speed Limit***: GetRight can be set to obey a "Speed Limit" so that it will only use a fixed amount of your modem's capacity. This feature will allow you to download files with GetRight and still use your web browser without as much loss of performance...If you have not set a speed limit when this is pressed, the configuration form will display for you to set a limit"; page 29, specifically the section "**Speed Limit XX YY per second**")

Miller teaches that a requesting computer downloads a file at a limited rate in order to avoid network congestion and to reduce the load on the server (see column 4, lines 25-30).

"GetRight" similarly teaches that enabling the user to set an input speed setting in order to limit the rate of data transfer at the client so that the requesting computer does not use its entire data rate transfer capacity (see page 8, specifically

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"Obey Speed Limit*: GetRight can be set to obey a "Speed Limit" so that it will only use a fixed amount of your modem's capacity.) Therefore, since these references, when combined, produce a system that enables for reduced rate data transfer between a requesting computer and a server in order to reduce the load on the server, requesting computer, and the network in order to avoid overloading these elements, it would have been obvious to one of ordinary skill in the art to combine the teachings of these references to create a system that teach the claimed invention because reducing the rate of data transfer in order to avoid overloading the processing capacity of various elements is recognized as common knowledge within the art and to combine these references to achieve a greater degree of protection against overloading would have been recognized by those skilled in the art as a more desirable solution.

Regarding claim 2, Miller and "GetRight" disclose a communication method according to claim 1.

Miller discloses in which the transmitting step comprises substeps of:

determining, at the server in response to receiving the speed indication signal, a block size based at least on the indicated speed of transmission; determining, at the server in response to receiving the speed indication signal, a period

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based at least on the speed indication signal, wherein the period is longer than the period required to transmit the block size at the data rate of the data link; and transmitting, from the server in response to receiving the speed indication signal, a plurality of blocks of data, each of the blocks having the block size and being transmitted at intervals substantially equal to the period. (column 10, lines 24-36; column 10, line 53-column 11, line 9)

Regarding claim 4, Miller and "GetRight" disclose a communication method according to claim 1.

Miller discloses the method further comprising steps of reading the specified data item from a memory associated with the server. (column 9, line 56-column 10, line 11)

Claims 6-7, 9, 11-12, and 14 are also rejected since claims 6-7 and 9 recite a communication system and claims 11-12 and 14 recite a computer readable medium that contain substantially the same limitations as recited in claims 1-2 and 4 respectively.

Regarding claims 22 and 23, Miller and "GetRight" disclosed the method and system according to claims 1 and 6.

Miller does not expressly disclose wherein the speed indication signal is a quantity specifying a maximum data transmission rate corresponding to the user input setting, however, "GetRight" does disclose these limitations (page 8,

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specifically "Obey Speed Limit*: GetRight can be set to obey a "Speed Limit" so that it will only use a fixed amount of your modem's capacity. This feature will allow you to download files with GetRight and still use your web browser without as much loss of performance...If you have not set a speed limit when this is pressed, the configuration form will display for you to set a limit")

Claims 22 and 23 are rejected since the reasons for the determination of obviousness are the same as presented in regards to claim 1.

Claims 3, 8, 13, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of US Patent 5,991,810 and "GetRight" and in further view of US Patent 5,991,810 A to Shapiro et al.

Regarding claim 3, Miller and "GetRight" disclose a communication method according to claim 1.

Miller and "GetRight" do not disclose wherein the method further comprises the steps of accessing a remote computer indicated in an address included in the request, wherein the remote computer is not one of the server and the requesting computer and receiving, at the server, the specified data item from the remote computer, however, Shapiro does disclose these limitations (column 1, lines 25-44).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of these references since Shapiro discloses that using a server to access a remote computer to receive a specified data item allows the server to process a requesting computer's request for specified data items without the requesting computer having to make a specific connection to the remote computer (column 1, lines 30-33). In view of these specific advantages and that the references are directed to sending specified data items to a requesting computer, one of ordinary skill would have been recognized these advantages and combined these references to achieve a system for sending specified data items to a requesting computer that utilizes these advantages.

Claims 8 and 13 are also rejected since these claims recite substantially the same limitations as recited in claim 3.

Regarding claim 21, Miller, "GetRight" and Shapiro disclose the method according to claim 3.

Miller, "GetRight", and Shapiro do not expressly disclose wherein the server is a dialup server, however, the Applicant admits that the use of a dialup server is within the knowledge of one of ordinary skill in the art by its use by Internet service providers and that the dialup server is used in interactions with a client (see page 2 of the specification).

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This knowledge of one of ordinary skill in the art regarding dialup servers would have suggested to one of ordinary skill in the art to modify the teachings of Miller and Shapiro to use a dialup server in place of the servers disclosed in Miller and Shapiro. Therefore, it would have been obvious to one of ordinary skill to achieve the claimed invention.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller and "GetRight" and in further view of US Patent 5,167,035 to Mann et al.

Regarding claim 19, Miller and "GetRight" disclosed the method according to claim 1.

Miller disclosed the method further comprising:
receiving at the server, from the requesting computer, a new speed indication signal contains a new indicated speed, the new speed indication signal being received subsequently to the receiving the request; and adjusting, in response to receiving the new speed indication signal, the average rate of transmission to be not greater than the new indicated speed contained within the new speed indication signal, wherein the new indicated speed is less than the data rate of the data link and less than the data rate capacity of the requesting computer.
(column 6, lines 4-8; see also references as shown in claim 1)

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Miller and "GetRight" do not expressly disclose receiving the new speed indication signal during the transmitting the specified data item and adjusting the average rate of transmission while continuing the transmitting of the specified data item, however, Mann does disclose this limitation (column 5, line 53-column 6, line 27, specifically column 5, line 9-21)

It would have been obvious to one of ordinary skill in the art at the time the invention was made since Mann discloses that using a new speed indication signal during the transmission of a specified data item allows the rate at which the data is sent to be dynamically altered to accommodate the dynamics of the data link (column 6, lines 22-27). In view of these specific advantages and that the references are directed to using speed indication signals to set the rate at which data is sent between a client and a server, one of ordinary skill would have combined these references to incorporate the advantages described in Mann within the similar system of using speed indication signals to set the rate at which data is sent between a client and a server as described in Miller and "GetRight".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is

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reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

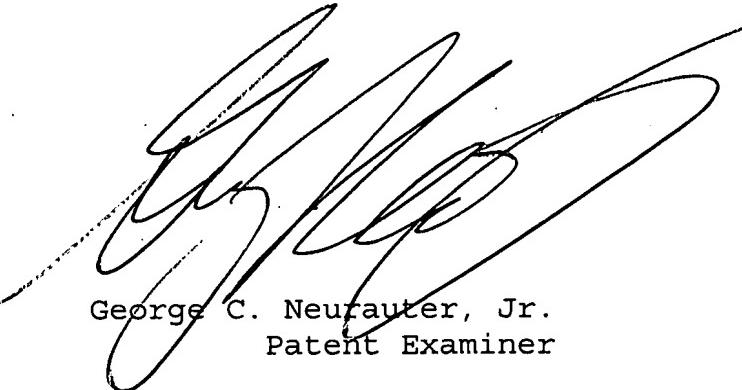
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is 571-272-3918. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



George C. Neurauter, Jr.
Patent Examiner